

MEMORANDUM

October 21, 1994

TO: [Name withheld]
Chief of Police

FROM: Jay L. Cohen, Chair [initialed]
Montgomery County Ethics Commission

RE: Advisory Opinion—Community Policing Foundation

The Ethics Commission has reviewed your request for advice regarding any ethics issues that may arise from the establishment of a Community Policing Foundation. Along with your inquiry, you provided a copy of the brochure that has been prepared describing the function and operation of the proposed foundation. You explained that the foundation would be a private, nonprofit, business-sponsored organization and that it would help increase the efficiency of the Department of Police by providing resources such as seed money, in-kind services, and expertise. You also indicated that the foundation would be modeled after a similar program that exists in Baltimore County.

The information you have provided is insufficient to enable the Ethics Commission to issue a definitive advisory opinion regarding the proposed foundation. To evaluate the program adequately, the Ethics Commission would need additional details regarding the Baltimore County program as well as the by-laws and other documents establishing the foundation. This opinion, therefore, discusses the general provisions of the Ethics Law that are implicated by the creation of a private foundation based upon the current law as well as the recent amendment to the Ethics Law, which will become effective on November 8, 1994.

The current Ethics Law includes several provisions regarding the use of County property for private gain:

- (b) Unless expressly authorized by the Chief Administrative Officer a person must not use an official County agency title or insignia in connection with any private enterprise.
- (c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:
 - (1) generally available to the public; and

- (2) authorized by a County law, regulation, or administrative procedure.

§19A-14 of the Montgomery County Code 1994. This section applies to the use of the County insignia and the use of the title “Chief of Police” on the brochure. To the extent that support for the foundation may include participation of public employees during work hours and using County facilities, the section also would be applicable.

The Ethics Law also contains extensive provisions concerning the solicitation of gifts by public employees. In particular:

- (a) A public employee must not solicit a gift:
 - (1) from any person who:
 - * * *
 - (B) does business with the County agency with which the public employee is affiliated; or
 - * * *
 - (2) during official work hours, or at a County agency;
 - (3) while wearing all or part of an official uniform of a County agency, or while otherwise identifiable as a public employee;. . .

§19A-16 of the Montgomery County Code 1994. Certain solicitations are permitted for some charitable organizations or by Executive Order. §19A-16(b) of the Montgomery County Code. These provisions would apply if public employees would be expected to place telephone calls requesting contributions to the foundation during work hours or while identifiable as public employees.

The current law permits solicitation by a public employee for the benefit of the County pursuant to an Executive order. As you can see, however, the law does not contemplate the solicitation of gifts by public employees on behalf of a private entity. The recent amendment to the Ethics Law enacted by Bill No. 9-93, however, appears to address the type of program described in your letter. Under the new law, effective November 8, 1994, the County Executive may issue an Executive Order providing that a public employee may solicit a gift:

- (3) from any person, during official work hours, while identifiable as a public employee, or at a County agency, for the benefit of a County agency or nonprofit organization formally cooperating on a program with a County agency if the solicitation is authorized by the County Executive . . . in an order . . . that designates:
 - (A) the public employee authorized to solicit the gift;
 - (B) the purpose for which the gift is sought;
 - (C) the manner in which the gift may be solicited;

- (D) the persons or class of persons from whom the gifts may be solicited; and
- (E) the type of gifts that may be solicited

§19A-16(b)(3) of the Montgomery County Code 1994.

As discussed in this memorandum, several issues involving the Ethics Law arise from the implementation of the Community Policing Foundation based upon the current provisions of the Ethics Law. If the program is implemented after November 8, 1994, many of the issues may be addressed by obtaining an Executive Order approving the solicitation, identifying the individuals who will conduct the solicitations, and stating the purposes of the solicitations.

If you have additional questions concerning the application of the Ethics Law to the proposed foundation, please do not hesitate to contact the Commission.

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cc: Barbara McNally, Executive Secretary, Montgomery County Ethics Commission